

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

Applicants are submitting the present Amendment without prejudice to the subsequent prosecution of claims to some or all of the subject matter which might be disclaimed by virtue of this response (although none is believed to be), and explicitly reserve the right to pursue some or all of such subject matter, in Divisional or Continuation Applications.

Applicants thank the Examiner for the careful examination of this case and respectfully request reexamination and reconsideration of the case, as amended. Below Applicants address the rejections in the Office Action and explain why the rejections are not applicable to the pending claims as amended.

I. CLAIM STATUS AND AMENDMENTS

Claims 1-10 were pending in this application when last examined and stand rejected.

Claims 1-10 have been amended in a non-narrowing manner to better conform to U.S. claim form. Support can be found in the claims as filed. No new matter has been added.

New claim 11 has been added, which is directed to the "preferably" subject matter removed from claim 5. No new matter has been added.

Claims 1-11 are pending upon entry of this amendment.

II. INDEFINITENESS REJECTION

Claims 1-10 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons in items 2-4 on page 2 of the Office Action.

This rejection is respectfully traversed.

Claim 1 has been amended to better define the subject matter more clearly and distinctively in a non-narrowing manner.

The claims 1 and 3 have also been amended to eliminate insufficient antecedence issues for the limitations therein.

Claim 5 is amended to remove the "preferably" language, which has been added back in new dependent claim 11.

With respect to the Office's concern regarding the term "polyaxial", it is respectfully submitted that this term is clear and definite based on the definition in the disclosure and common usage in the art field. The "polyaxial" is widely used for designating a screw of a vertebral osteosynthesis equipment having a pin for receiving a connecting portion which is articulated with respect to a base part inserted in a vertebrae.

For example, the ECLA patent classification (used by the European Patent Office) includes a class referring to such screws as shown below:

- Spinal positioners or stabilizers [N: (orthopaedic corsets A61F5/02)] [N9509];

- [N: Screws or hooks combined with longitudinal elements] [N9509] [C0801] A61B17/70B; and
- [N: Screws or hooks which are polyaxial, i.e., which have a rod-clamping part and a bone-anchoring part which pivots relative to each other until the rod is clamped] [N9809] [C0305] A61B17/70B4.

It is also noted that 196 hits can be obtained in this class A61B17/70B4 by the query "polyaxia" or "poly-axia." Accordingly, it is respectfully submitted that this term is well defined and definite to those skilled in the art.

The claims are thus clear, definite and have full antecedent basis.

Therefore, this rejection is believed to be overcome, and withdrawal thereof is respectfully requested.

III. PRIOR ART REJECTIONS

Claims 1, 2, and 4-9 were rejected under 35 U.S.C. § 102(b) as anticipated by RALPH et al. (U.S. 5,882,350) for the reasons on pages 3-4 of the Office Action.

Claim 3 is rejected under 35 U.S.C. § 103(a) as obvious over RALPH et al. (U.S. 5,882,350) for the reasons on page 4 of the Action.

These rejections are respectfully traversed and will be discussed together below.

It is well established that to anticipate a claim, a cited prior art reference must disclose or suggest each and every element of the claimed invention. See, M.P.E.P. (Eighth Ed., Rev. 6 (September 2007) at § 2131.

It is well established that to support a *prima facie* case of obviousness, the Office must provide a rationale showing that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions to yield predictable results. See, *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 U.S.P.Q.2d 1385, 1395 (2007); and M.P.E.P. (Eighth Ed., Rev. 6 (September 2007) at § 2143.02.

In the instant case, RALPH is discussed in the "Background" section of the present application in relation to known "tulip-shaped" screws having a base portion provided with a spherical head at their proximal end and a spherical corresponding cavity in the bottom of their "tulip-shaped" connecting portion.

Amended claim 1 recites: Vertebral osteosynthesis equipment comprising:

bony anchoring members, wherein said boney anchoring members are pedicular screws, forceps or hooks;

one or two linking rods capable of being connected to said boney anchoring members; and

connection assemblies capable of connecting said linking rods to said boney anchoring members,

wherein at least one of said boney anchoring members is a polyaxial anchoring element having a connection part articulated with respect to a base portion intended to be attached to the vertebra;

said polyaxial anchoring element comprises a junction portion connecting a portion of said connection assemblies and said base portion , said junction portion having a flexible structure providing a desirable joint of said connection assemblies with respect to the base portion.

"Connection assemblies" refer to the part that allows the connection of the linking rods 2 to the base portion 5 of the polyaxial anchoring member. In reference to Figures 5 and 9 of RALPH, the corresponding "connection assembly" is constituted by the parts 185, 200, 142 and 132.

"Base portion (5)" refers to the part intended to be attached to the vertebra. In reference to Figures 4 and 9 of RALPH, the corresponding "base portion" is the part 120.

"Junction portion" is defined as the portion connecting a portion (6, 50) of said connection assembly (6, 3, 4, 10, 11; 40, 50, 4) and said base portion (5). In reference to Figure 9 of RALPH, the corresponding "junction portion" is the sphere and the corresponding spherical cavity.

In other words, the part 142 of RALPH does not allow itself to connect the rod 250 to the base portion 120 and is therefore different from and does not meet the limitation of

"connection assemblies" as in the vertebral osteosynthesis equipment of claim 1.

The area 135 of RALPH is not allowed is not attachable itself to the vertebra, and thus, it is not a "base portion" as defined in the vertebral osteosynthesis equipment of claim 1.

Moreover, the junction portion that, according to the Examiner, the bushing 200 and the part 132 would constitute has not a flexible structure providing the desirable joint of the connection assembly with respect to the base portion. In reference to Figure 9 of RALPH, it is clear that, once the nut 185 is tightened, the rod 250 is pressing the parts 142 and 143 in the bottom of the bushing 200 to that there is no flexibility of the area 135 of part 132. In addition, this tightening of the nut 185 creates a "compression lock" (col. 7, line 62) of the socket portion 132 on the spherical head 122, so that there is clearly no flexibility of the area 135 after assembly.

Therefore, it is respectfully submitted that the device in RALPH is different from the arrangement of the vertebral osteosynthesis equipment of claim 1 so much so that RALPH fails to anticipate or render obvious claim 1. Thus, Applicants respectfully submit that RALPH fails to disclose or suggest each and every element of claim 1. For these reasons, independent claim 1 is novel and patentable over RALPH.

The remaining claims depend, either directly or indirectly, on claim 1. Thus, these claims are also novel and patentable over RALPH in view of the dependency on claim 1.

Therefore, Applicants respectfully submit that the above-noted prior art rejections over RALPH are untenable and should be withdrawn.

IV. CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/Jay F. Williams/

Jay F. Williams, Reg. No. 48,036
209 Madison Street, Suite 500
Alexandria, VA 22314
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

JW/lad